

### REMARKS

The Official Action mailed September 22, 2009, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicant notes with appreciation the consideration of the Information Disclosure Statements filed on June 8, 2006; September 18, 2006; February 20, 2008; and June 24, 2008.

Claims 1-12 are pending in the present application, of which claims 1, 7 and 9-12 are independent. Claims 1, 7 and 9-12 have been amended to better recite the features of the present invention. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

Paragraph 4 of the Official Action rejects claims 1-6 as obvious based on the combination of U.S. Patent No. 5,835,508 to Kushita and U.S. Publication No. 2002/0040460 to Choi. Paragraph 12 of the Official Action rejects claims 7 and 8 as obvious based on the combination of Kushita, U.S. Patent No. 5,457,705 to Todoroki and Choi. Paragraphs 17-20 of the Official Action appear to reject claims 9-12 as obvious based on various combinations of Kushita, Todoroki and Choi. The Applicant respectfully submits that a *prima facie* case of obviousness cannot be maintained against the independent claims of the present application, as amended.

As stated in MPEP §§ 2142-2144.04, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some reason, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some reason to do so found

either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The prior art, either alone or in combination, does not teach or suggest all the features of the independent claims, as amended. Independent claim 1 has been amended to recite "wherein the bit adding part operates to add bits of association data to each of bits of the main data instead of the redundant bits to produce the hybrid bit data when it is decided by the data transmission characteristic measuring part that the environment of the communication path is non-defective, the association data being associated with and distinct in contents from the main data and obtained by unitizing additional information for expansion of services." Independent claims 7 and 9-12 have been amended to recite similar features, i.e., "predetermined bits including redundant bits and bits of distinct data associated with the main data" or "association data being associated with and distinct in contents from the main data." These features are supported in the present specification, for example, by page 12, lines 5-16, which discloses the following:

... When the bit adding part 14 decides that the received signal strength indicator is high, the bit adding part 14 adds respective bit data to the respective bit data of the audio data to be protected instead of the redundant bit data to produce hybrid bit data.

The additional data are data obtained by unitizing additional information for expansion of service such as guidance data concerning telephone numbers, location information of an originator, and a profile of the originator and is data associated with the audio data to be protected.

Particularly, the novelty of the present invention resides in adding distinct data (such as "guidance data concerning telephone numbers," "location information of an

originator" or a "profile of the originator") to main data instead of adding data comprising redundant bits. In the claims, this is generically defined using an expression such as "add bits of association data to each of bits of the main data instead of the redundant bits ..., the association data being associated with and distinct in contents from the main data." Specifically, the present invention's transmitting apparatus operates to create hybrid bit data by adding to each bit of main data the bits of distinct data (such as guidance data concerning telephone numbers, location information of an originator or a profile of the originator) for expansion of services, which is entirely different from the main data, if it decided that the environment of a communication path is non-defective.

For the reasons provided below, Kushita, Todoroki and Choi, either alone or in combination, do not teach or suggest the above-referenced features of the present invention.

The Official Action concedes that "Kushita does not explicitly teach wherein the bit adding part operates to add bits of association data to each of bits of the main data instead of the redundant bits to produce the hybrid bit data when it is decided by the data transmission characteristic measuring part that the environment of the communication path is non-defective, the association data being associated with the main data obtained by utilizing additional information for expansion services" (pages 3-4, Paper No. 20090916) and that "Kushita does not explicitly teach the predetermined bits including redundant bits and bit of data associated with the main data" (page 9, Id.). The Official Action relies on Choi to allegedly cure the deficiencies in Kushita (pages 4 and 9, Id.). However, in contrast with the present invention, in the communication system of Choi, if channel conditions are good, more of the source bits can be transmitted. That is, in Choi, redundant bits are to be decreased, and information bits to be transmitted are increased. Thus, in the present invention, the redundant bits are replaced with distinct data bits; whereas, in Choi, the redundant bits are replaced with the information data bits, which are to be originally transmitted and which are not "distinct." As such, the technique of the present invention is essentially different from


that of Choi either alone or in combination with Kushita and Todoroki. Therefore, the Applicant respectfully submits that Kushita, Todoroki and Choi, either alone or in combination, do not teach or suggest "predetermined bits including redundant bits and bits of distinct data associated with the main data" or "association data being associated with and distinct in contents from the main data."

Since Kushita, Todoroki and Choi do not teach or suggest all the claim limitations, a *prima facie* case of obviousness cannot be maintained. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) are in order and respectfully requested.

The Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(a), 1.20(b), 1.20(c), and 1.20(d) (except the Issue Fee) which may be required now or hereafter, or credit any overpayment to Deposit Account No. 50-2280.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

  
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